



# Report to Licensing Committee

**Date:** 02 February 2022

**Title:** Draft Statement of Licensing Policy under the Gambling Act 2005

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**Recommendations:**

1. To agree the final draft of the Statement of Licensing Policy under the Gambling Act 2005
2. To recommend the Statement of Licensing Policy under the Gambling Act 2005 to Full Council for approval and adoption with an implementation date of 1 April 2022.

## **1. Background**

- 1.1 In accordance with the Gambling Act 2005 (the 'Act'), Buckinghamshire Council, in its role as Licensing Authority, is responsible for authorising certain gambling activities at premises used for gambling purposes by the issue of premises licences and permits.
- 1.2 Under section 349 of the Act, the Licensing Authority is required to prepare and publish a Statement of Licensing Policy which sets out its approach to the consideration and determination of applications made under the Act and any subsequent necessary compliance and enforcement action.
- 1.3 The Council's licensing service is currently operating under separate legacy policies and fees, reflecting the four former district council areas. Under the terms of the transitional legislation, Buckinghamshire Council has two years to prepare and implement a new single policy under the Act and align service provision. The deadline for implementation of the new Policy is no later than 1 April 2022. The new policy must be published at least four weeks before it is effective, the deadline for publication of the policy is therefore 4 March 2022.
- 1.4 On the 20<sup>th</sup> October 2021 the Licensing Committee approved a new draft policy for consultation purposes. A link to the report considered at this meeting is attached in the key documents within this report. The report set out the statutory and other considerations and requirements in producing a new draft policy.

- 1.5 The policy has now been subject to a full consultation process including direct communications with all statutory consultees and other stakeholders or bodies and groups who might be affected by gambling activities in Bucks.
- 1.6 The consultation ran from the 1<sup>st</sup> November until the 10<sup>th</sup> December 2021. The purpose of this report is to provide feedback on the responses received from the consultation process.

## **2. Main content of report**

- 2.1 Nine responses were received during the consultation period. Eight of these were received via the online consultation through Your Voice Bucks and one response was received via email with a letter attached. Copies of the online responses received are attached at Appendix 1 and a copy of the letter received via email is attached at Appendix 2
- 2.2 Four of the responses received online agreed with the contents of the Policy and one of the responses (from Thames Valley Police) strongly agreed.
- 2.3 A comment was made within one of the above responses that further education and information is required to raise awareness of the need for specific gambling licences or registrations, particularly unauthorised lotteries or raffles. Officers will ensure that information about lotteries registration and requirements is included on any relevant web pages and communications.
- 2.4 Three of the online responses neither agreed nor disagreed with the policy, with one stating that it was “very similar to gambling commission policies” and another providing no comments at all.
- 2.5 The third of these comments stated that town and parish councils should be consulted in relation to gambling activities.
- 2.6 All town and parish councils within the council area were notified of the draft policy and consulted on its contents in line with the consultee list set out at Appendix 2 of the draft policy.
- 2.7 In terms of consultation on applications for gambling activities, the Act specifies a list of statutory consultees, known as Responsible Authorities, who must be notified of specific applications and given 28 days to respond. This list is set out at section 4 of the draft policy and does not include town or parish councils. Beyond the statutory consultees, the Council has discretion to notify any party it considers relevant when an application is made. As referenced in paragraph 2.11 of this report, the Gambling Commission Guidance specifically identifies county, parish and town councillors as potential interested parties. In order to facilitate public participation in the local licence decision making process it is arguably good practice to notify these parties when a new or variation application is made. This approach would also be

consistent with the recently adopted policy under the Licensing Act 2003. As a consequence the draft gambling policy has been revised to include reference to notifying ward councillors and town and parish councils when a relevant application is made in their area.

2.8 The final online response disagreed with the contents of the policy and set out three specific areas which the contributor considered should be amended.

2.9 The first suggested change relates to section 5 of the policy which deals with Interested Parties who may make representations in relation to applications. The comment suggests that:

'Trade unions, charities, community groups, faith groups, medical practices' should be removed as Interested Parties. These groups do not have a direct interest in these matters and should be given no platform to campaign other than supporting their members who may wish to make representations. Town and Parish Councils who are elected to represent their communities should be added as Interested Parties.

2.10 Section 158 of the Gambling Act 2005 defines interested parties as people or organisations who:

- live sufficiently close to the premises to be likely to be affected by the authorised activities
- have business interests that might be affected by the authorised activities
- represent persons in either of these two groups.

2.11 The Gambling Commission Guidance for Local Authorities, to which the Council must have regard, provides examples of those who may be deemed to represent persons in either of the first two groups. These include:

“people who are democratically elected such as councillors, MSPs, MSs and MPs. This would include county, parish and town councillors. Other representatives might include bodies such as trade associations and trade unions, and residents’ and tenants’ associations. A school head or governor might act in representing the interests of pupils or parents and a community group might represent vulnerable people living near to the proposed premises.”

2.12 The Guidance goes on to state:

“Save for democratically elected persons, licensing authorities should satisfy themselves on a case by case basis that a person does represent interested parties, and request written evidence where necessary. A letter from the interested person(s) they are representing would be sufficient.”

2.13 The draft policy did not specifically refer to town and parish councillors and these have now been included within this section for the sake of clarity. Given the

Gambling Commission Guidance, however, it is not considered that any of the other named parties should be removed.

- 2.14 The second comment relates to Risk Assessments at section 15 of the policy and states, “This should go no further than the national standard for such matters and not the additional language included here”.
- 2.15 In relation to information on Risk Assessments within Licensing Policies, the Gambling Commission’s Guidance states:
- “Where a licensing authority’s policy statement sets out its approach to regulation with clear reference to local risks, it will facilitate operators being able to better understand the local environment and therefore proactively mitigate risks to the licensing objectives. In some circumstances, it might be appropriate to offer the licensee the opportunity to volunteer specific conditions that could be attached to the premises licence.”
- 2.16 It is considered that the draft policy’s section on Risk Assessments is relevant, necessary and in line with the Gambling Commission’s guidance. As a result, it is not considered necessary for any amendments to be made to this section of the draft policy.
- 2.17 The third comment relates to permitted stakes for club gaming which are set out at section 33 of the draft policy. The responder considers that the proposed stakes are too complicated and should be simplified so that all permitted stakes are set at £10,000 per week.
- 2.18 Club gaming stakes are, however, prescribed by law and so cannot be set locally. As a result, no change to the draft policy is required in this respect.
- 2.19 The response received by email was sent by Gosschalks Solicitors on behalf of the the Betting and Gaming Council. The letter provides information about the work of the Council and describes the recent challenges faced by gambling providers and national trends in relation to problem gambling. There are two comments within the response which are specific to the draft policy.
- 2.20 The first comment relates to section 20 of the policy which refers to conditions that can be attached to licensed gambling premises. The comment suggests that the section should clarify that all premises licences are subject to mandatory and default conditions which are designed to be sufficient to ensure operation that is reasonably consistent with the licensing objectives. It further suggests that the policy should be clear that additional conditions will only be considered or imposed where there is a clear risk to the licensing objectives which is not already adequately addressed.
- 2.21 The opening sentence of section 20 of the draft policy states that premises licences are subject to mandatory and default conditions. The section also confirms that any

additional conditions must be relevant, necessary and reasonable in relation to the specific premises or application.

- 2.22 In relation to the attachment of individual conditions, the Gambling Commission's Guidance to Local Authorities states at section 9.21 that *"Licensing authorities should note that mandatory conditions made under these regulations are set with the intention that no further regulation in relation to that matter is required. Therefore, it is extremely unlikely that licensing authorities will need to impose individual conditions in relation to matters that are already dealt with by mandatory conditions. Licensing authorities should only consider doing so where there are regulatory concerns of an exceptional nature, and any additional licence conditions must relate to the licensing objectives."*
- 2.23 As a result of the above guidance, this comment is considered to be reasonable and the draft policy wording has been amended at section 20 to better reflect the guidance.
- 2.24 The second comment also relates to section 20 of the draft policy regarding the reference to the need to ensure that applications to increase opening hours at betting shops are not being sought to take advantage of the ability to make use of gaming machines or fixed odds betting terminals (FOBT's). It is suggested that this requirement goes beyond the relevant Licence Conditions and Codes of Practice (specifically Code Provision 9.1.1) and should therefore be removed.
- 2.25 There has been considerable historical concern over the use of FOBT's by problem gamblers given the previous high permitted stakes and the ability to lose large sums of money in a short period of time. This section of the policy was therefore considered to be an important safeguard in terms of reducing harms caused by this area of gambling.
- 2.26 However, given the significant reduction in 2019 in permitted FOBT stakes from £100 to £2, it is considered that the risk posed by this type of betting has been significantly reduced and it is therefore reasonable to amend the draft policy to reflect this change. The specific part of the sentence referred to in the comment has been removed as a result.
- 2.27 A summary table of comments and policy changes (where considered appropriate) is attached at Appendix 3.
- 2.28 The amended draft policy is attached at Appendix 4.

### **3. Next steps and review**

- 3.1 If approved, the draft policy will be considered by Full Council for final approval and adoption at its meeting on the 23<sup>rd</sup> February 2022.

- 3.2 The adopted version of the policy will be published together with the statutory notice 4 weeks before the new policy takes effect.

#### **4. Other options considered**

None. The preparation and publication of a Statement of Licensing Policy under the Gambling Act 2005 is a legal requirement under section 349 of the Act. Failure to do so would be likely to result in legal challenge and reputational damage to the Licensing Authority.

#### **5. Legal and financial implications**

- 5.1 Section 349 of the Gambling Act 2005 requires licensing authorities to prepare, review and publish a statement of licensing policy at least every three years, which sets out how the authority will consider and determine applications made under the Act along with its approach to enforcement activities.
- 5.2 The Act is prescriptive in terms of the information to be included within the policy and in producing any such policy the authority must take into account the Gambling Commission's Guidance to Licensing Authorities, the licensing objectives, any relevant Codes of Practice and any consultation responses received.
- 5.3 The Gambling Act 2005 (Licensing Authority Policy Statement)(England and Wales) Regulations 2006 require that a policy once adopted must be published, along with a statutory notice, at least four weeks before the policy takes effect.
- 5.4 The work involved in preparing and publishing the new Statement of Licensing Policy is a function of the licensing service with the work performed by officers as part of their duties. No significant additional costs to the Council are envisaged.

#### **6. Corporate implications**

- 6.1 Protecting the vulnerable – The licensing objectives underpinning the Gambling Act 2005 include the requirement to protect children and other vulnerable persons from being harmed or exploited by gambling. It is important that the Licensing Authority clearly sets out the measures it intends to take to fulfil this objective within the policy document.
- 6.2 Property – N/A
- 6.3 HR – N/A
- 6.4 Climate change – N/A
- 6.5 Sustainability – N/A

Equality – an equality impact screening assessment has been completed which indicates that a full equalities impact assessment is not required

6.6 Data – N/A

6.7 Value for money – the Licensing Service has ensured that the costs involved in delivering the service are kept to a minimum whilst also ensuring that the provision of the service is cost neutral.

**Key documents:**

Report to Licensing Committee of 20<sup>th</sup> October 2021

<https://buckinghamshire.moderngov.co.uk/ieListDocuments.aspx?CId=349&MIId=17178>

